

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	File Number: EB-07-HU-007
Donald Winton)	
)	NAL/Acct. No.: 200732540003
Licensee of Citizen Band Radio Station)	
Corpus Christi, Texas)	FRN: 0016201386
)	

SECOND MEMORANDUM OPINION AND ORDER

Adopted: February 21, 2008

Released: February 25, 2008

By the Associate Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Second Memorandum Opinion and Order* (“2nd MO&O”), we dismiss the petition for reconsideration filed by Donald Winton of the Enforcement Bureau’s (“Bureau”) *Memorandum Opinion and Order*¹ granting in part and denying in part his petition for reconsideration of a *Forfeiture Order* issued July 12, 2007.² The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$7,000 on Mr. Winton for the willful violation of Section 95.426(a) of the Commission’s Rules (“Rule”).³ The noted violation involved Mr. Winton’s failure to make his citizens band (“CB”) radio station available for inspection. The Bureau reduced the monetary forfeiture for this violation to \$225 in the *Memorandum Opinion and Order* based on his demonstrated inability to pay the forfeiture. As discussed below, we dismiss Mr. Winton’s petition as untimely.

II. BACKGROUND

2. On February 21, 2007, in response to a complaint that a CB radio station in Corpus Christi, Texas was jamming communications on CB channel 19 by continually re-broadcasting the programming of a local AM broadcast station, an agent from the Commission’s Houston Office of the Bureau (“Houston Office”) monitored communications on CB channel 19 in the Corpus Christi area. The agent observed a radio signal on CB channel 19 re-broadcasting the programming of a local AM broadcast station; and using radio direction finding techniques determined that the signal originated from an antenna mounted on a house in Corpus Christi, Texas.

3. Still on February 21, 2007, while the agent was making measurements on the radio signal from the CB radio station, Mr. Winton exited the house and walked down the driveway. The agent introduced himself as an FCC agent, and requested to inspect the CB radio station inside the house. Mr.

¹ *Donald Winton*, Memorandum Opinion and Order, DA 07-3927 (Enf. Bur. September 18, 2007) (“*Memorandum Opinion and Order*”).

² *Donald Winton*, Forfeiture Order, 22 FCC Rcd 12779 (Enf. Bur. South Central Region 2007) (“*Forfeiture Order*”).

³ 47 C.F.R. § 95.426(a).

Winton confirmed this location was his residence and that the CB station belonged to him, but refused to make the station available for inspection. The agent advised Mr. Winton that the Commission's Rules require the operator of a CB radio station to make the station available for inspection. Mr. Winton still refused to make the station available for inspection. The agent then requested that Mr. Winton go inside and take the station off the air because it was blocking communications on CB radio channel 19. Mr. Winton walked into the house and the station's transmissions ceased. Mr. Winton returned and continued to refuse to make the station available for inspection, so the agent left the area.

4. On April 23, 2007, the Houston Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Winton in the amount of seven thousand dollars (\$7,000), for the apparent willful violation of Section 95.426(a) of the Rules.⁴ Mr. Winton submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture. On July 12, 2007, the Bureau released the *Forfeiture Order*, imposing a \$7,000 forfeiture. After receipt of the petition for reconsideration, the Bureau released the *Memorandum Opinion and Order*, reducing the forfeiture to \$225 based on Mr. Winton's demonstrated inability to pay.

III. DISCUSSION

5. Section 405 of the Communications Act of 1934, as amended ("Act")⁵ requires that a petition for reconsideration of a Commission action or an action by delegated authority must be filed no later than 30 days after the action that is the subject of the appeal. Once it has made public notice of the action pursuant to Section 1.4 of the Rules,⁶ the Commission loses jurisdiction to consider an appeal after 30 days have passed. Section 1.106 of the Rules reflects this statutory mandate.⁷

6. Mr. Winton did not timely file his petition for reconsideration of the *Memorandum Opinion and Order*. Public notice of the issuance of the *Memorandum Opinion and Order* was provided on September 18, 2007.⁸ The thirtieth day after September 18, 2007 was October 18, 2007. Mr. Winton's petition for reconsideration was therefore due on October 18, 2007. His petition for reconsideration was not received by the Commission until October 22, 2007.⁹ After October 18, 2007, pursuant to the Act, the Commission has no jurisdiction to consider Mr. Winton's petition for reconsideration.¹⁰ Accordingly, we must dismiss Mr. Winton's petition as untimely.¹¹

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732540003 (Enf. Bur., Houston Office, April 23, 2007) ("*NAL*").

⁵ 47 U.S.C. § 405(a).

⁶ 47 C.F.R. § 1.4.

⁷ 47 C.F.R. § 1.106(f).

⁸ *Daily Digest*, Vol. 26, No. 180, September 18, 2007.

⁹ Mr. Winton's petition for reconsideration was postmarked October 19, 2007. Thus, it was mailed after the petition was due.

¹⁰ *Reuters Ltd. v. FCC*, 781 F. 2d 946, 951 (D.C. Cir. 1986); *National Black Media Coalition v. FCC*, 760 F. 2d 1297, 1299-1300 (D.C. Cir. 1985, Scalia, J.) (FCC has no jurisdiction to consider an appeal after 30 days have passed from date of public notice, distinguishing *Gardner v. FCC*, 530 F. 2d 1086 (D.C. Cir. 1976)).

¹¹ See *Board of Education of the City of Atlanta*, 11 FCC Rcd 7763, 7765-6 (1996) (application for review filed one day late dismissed as untimely). See also *Garnerlynn Communications*, 99 F.C.C.2d 1176, 1177 n.2 (1984) (staff may dismiss untimely application for review).

7. Assuming *arguendo* that Mr. Winton's petition was timely filed, we would nevertheless deny it. Mr. Winton does not deny that he refused to allow the agent to inspect his CB station located in his home. Instead Mr. Winton asserts that he is not a Commission licensee, that his CB station was not rebroadcasting the programming of a local radio station, and that the agent did not have a search warrant to inspect his home. Mr. Winton also alleges that the agent's description of the events is false.¹²

8. First, it is irrelevant whether Mr. Winton was rebroadcasting the programming of a local radio station. The instant violation involved Mr. Winton's failure to allow an inspection of his CB station, not the use of his CB station. Second, Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.¹³ Section 95.404 of the Rules¹⁴ states that CB operators do not require an individual license to operate a CB station because they are authorized by this rule to operate in accordance with the rules in this subpart. Accordingly, Mr. Winton was authorized to operate his CB station by rule, provided his operation was consistent with the requirements set forth in Part 95 of the Rules. Third, no search warrant is required for a Commission agent to inspect a CB station. Section 95.426(a) of the Rules requires that if an authorized FCC representative requests to inspect your CB station, you must make your station and records available for inspection.¹⁵ Section 303(n) of the Act authorizes the Commission to inspect all radio installations associated with stations ... which the Commission has by rule has authorized to operate without a license.¹⁶ CB station owners may refuse to allow such an inspection. However, such refusal, as demonstrated by the instant case, is a violation of the Commission's Rules and may subject the CB station owner to enforcement action. Finally, although Mr. Winton alleges the agent's description of the events was false, he admits to the key elements of the violation: he had a CB station in his home and he refused to allow the agent to inspect his station.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 1.115(g) of the Commission's Rules,¹⁷ that the Petition for Reconsideration filed by Donald Winton **IS DISMISSED**.

10. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁸ Donald Winton **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two hundred and twenty-five dollars (\$225) for violation of Section 95.426(a) of the Rules.

¹² Mr. Winton also stated that he would like to appeal the Bureau's decision to a court and requested a court-appointed lawyer. Mr. Winton may appeal the Bureau's decision in the manner prescribed in chapter 158 of title 28 of the United States Code. *See* 47 U.S.C. § 402(a).

¹³ 47 U.S.C. § 301.

¹⁴ 47 C.F.R. § 95.404.

¹⁵ 47 C.F.R. § 95.426(a).

¹⁶ 47 U.S.C. § 303(n).

¹⁷ 47 C.F.R. § 1.115(g).

¹⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 95.426(a).

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

12. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to Donald Winton at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Associate Chief, Enforcement Bureau